



ACQUIRING LAND:

POLICIES

3

MARCH 18, 2002

IAC's Mission



...Is to foster the protection and enhancement of Washington's natural and outdoor recreation resources for current and future generations. The Board provides funding, technical assistance, research and policy development, coordination, advocacy, and encourages long-term stewardship.

SRFB's Mission



The Board supports salmon recovery by funding habitat protection and restoration projects, and related programs and activities that produce sustainable and measurable benefits for fish and their habitat.

Contents

SECTION 1 – INTRODUCTION	1
Manual Conventions	1
Background	1
Manual Authority	2
Related Publications	2
Contact Information	2
Workshops	2
SECTION 2 – POLICIES	3
<i>Eligibility Policies</i>	3
Types of Eligible Land Acquisition Projects	3
Perpetual Public Ownership & Stewardship	3
Ineligible Land Acquisition Projects	4
Federal Agencies	5
Eligible Costs	5
Ineligible Costs	7
Waiver of Retroactivity	7
Waiver of Retroactivity—LWCF	7
<i>General Policies</i>	8
IAC-SRFB Decisions	8
Director’s Decisions	8
Phased Projects	9
Combination Projects	9
Acquiring Easements	9
Conservation Easements	10
Trail & Access Easements	10
Mitigation Acquisitions	10
Acquiring Publicly Owned Lands	11
Acquisition of Structures to be Retained	11
Encumbrances	11
Acquisition & Relocation Policies	11
Uniform Acquisition Procedures	12
Uniform Relocation Assistance	13
Acknowledgment & Signs	13
Public Access	13
When Land Acquisition Costs Exceed Fair Market Value	13
Documentation Required for Land Donations	14
Escrow Payments	14
Compatible Multiple Use	15
Interim Land Uses	15
Estimating Land Value	15
<i>Appraisal Requirements</i>	16
Appraisal Reporting Criteria	17
Appraisal Reviews	17
Appraiser’s Qualifications	17
<i>User Fees and other income</i>	18
<i>Civil Rights</i>	19
<i>Inspections</i>	20
<i>Hazardous Substances</i>	20

Certification -----	20
Hazardous Substances Support Documentation -----	20
Buying Contaminated Property -----	21
Eligible Costs -----	21
<i>Contract or Installment Sales</i> -----	22
<i>BOUNDARY Maps</i> -----	22
Appendix A: Statement Of Accompaniment -----	24
Appendix B-1: Offer Of Purchase At Estimated Just Compensation-----	25
Appendix B-2: Nonprofit Offer to Purchase-----	26
Appendix C-1: Deed Of Right, Conservation-----	27
Appendix C-2: Deed Of Right, Salmon Recovery & Conservation-----	30
Appendix C-3: Deed Of Right, Recreation-----	33
Appendix D: Letter Of Opinion-----	36
Appendix E: Hazardous Substances Certification-----	37
Appendix F: Baseline Documentation-----	38
Appendix G-1: Assignment Of Rights -----	39
Appendix G-2: Assignment of Rights--SRFB-----	46
Appendix H: Conservation Easement Requirements -----	52
Appendix I: Waiver of Retroactivity -----	64
Appendix J: Environmental Assessments -----	68
SECTION 3 – INDEX -----	70

SECTION 1 – INTRODUCTION

Manual Conventions

IAC (Interagency Committee for Outdoor Recreation) refers to a board and a state agency. The agency is the office staff and provides grant and administrative support to the IAC Board and SRFB (Salmon Recovery Funding Board), as directed under RCW 79A.25.240. The policies in this manual guide both of these independent, Executive branch state government boards. As a reference aid, this manual uses the following conventions:

- Agency – Any federal, state or local political subdivision. Local agency is defined as any county, city or town, or other municipal corporation or political subdivision of the state that has authority to acquire property by eminent domain under state law.
- Applicant – Any agency or organization that meets the qualifying standards for soliciting funds administered by the Office.
- Director – Refers to the head of the Office or the Director's designee.
- IAC – Interagency Committee for Outdoor Recreation's Board.
- IAC-SRFB – Refers to an independent action by the appropriate Board.
- Office – Includes Director and other staff supporting both IAC and SRFB.
- Sponsor – The applicant who has been awarded a grant and is bound by an executed IAC-SRFB agreement.
- SRFB – Salmon Recovery Funding Board.

Background

This manual provides basic information about IAC-SRFB policies for acquiring land. It is to be used with individual grant program policy manuals which provide additional details and identifies any exceptions. Use it for all acquisition projects in these programs:

- Boating Facilities (*BFP* – Manual 9)
- Firearms and Archery Range Recreation (*FARR* – Manual 11)
- Land and Water Conservation Fund (*LWCF* – Manual 15)
- Nonhighway and Off-Road Vehicle Activities (*NOVA* – Manuals 12, 13, 14)
- Riparian Habitat (*RHP* – Manual 6)
- Salmon Recovery (*SRFB* – Manual 18)
- Washington Wildlife and Recreation (*WWRP* – Manual 10)
- Youth Athletic Facilities (*YAF* – Manual 17).

For more information, refer to the individual policy manuals for these programs.

Manual Authority Authority for the information in this manual is found in several statutes and rules: RCW¹ 46.09.240, 77.85.120 (1)(d), 79A.15.060(1), 79A.15.070(5), 79A.25.080(2), 79A.25.210, and Titles 286 and 420 WAC². IAC-SRFB adopted the policies in this manual in a public meeting.

The *Land and Water Conservation Fund Grants-in-Aid Manual* (U.S. Dept. of Interior, National Park Service), provides additional guidance for LWCF grants.

Related Publications There are many publications designed to explain these programs. They include:

- ▶ Summary brochures and program fact sheets that describe each program's goals and funding
- ▶ Program schedules
- ▶ Program policy manuals
- ▶ Statutes and rules, and
- ▶ State plans that give broad policy background.

Contact us to obtain a complete list of these free publications. All materials can be prepared in an alternative format. Most publications are available on our website.

Contact Information IAC-SRFB encourages anyone interested in its programs to contact its staff at:

Natural Resources Building	IAC Phone	(360)	902-3000
1111 Washington Street, Floor 2 East	SRFB Phone	(360)	902-2636
P.O. Box 40917	IAC-SRFB FAX	(360)	902-3026
Olympia, Washington 98504-0917	IAC-SRFB TDD	(360)	902-1996
	IAC-SRFB Email	info@iac.wa.gov	
	IAC-SRFB	http://www.wa.gov/iac	

Workshops Contact the Office about its annual application and successful applicants workshops. Typically, they are held at various times during the year, depending on each program's grant schedule. The workshops are often held in several locations around the state.

¹ RCW — Revised Code of Washington

² WAC — Washington Administrative Code

SECTION 2 – POLICIES

ELIGIBILITY POLICIES

Types of Eligible Land Acquisition Projects

An acquisition grant from IAC-SRFB may be used to purchase real property for a variety of habitat conservation, outdoor recreation and salmon recovery purposes. Not all programs, however, provide funding for acquisition. Refer to the appropriate program manual (page 1) to determine which programs accept acquisition proposals.

In general, IAC grants may be used to purchase both fee and less than fee interest in real property. Fee acquisition includes the purchase of the land and improvements by either a *warranty deed* or a *quit claim deed*.

Less than fee acquisition includes the purchase of a lease, easement (road, right-of-way, trail, conservation right, etc.), property right (agricultural, development, mineral, timber, water, etc.), and reserve interests deeds.

Less than fee acquisition is subject to the following conditions:

1. Unless precluded by state law, the interest length must be at least:
 - ▷ 50 years for WWRP, BFP, and NOVA projects
 - ▷ 30 years for YAF projects
 - ▷ 10 years for FARR projects.
2. The interest cannot be revocable at will by the signatories.
3. The value must be supported through standard appraisal techniques.
4. The cost must be a lump sum payment at initiation.
5. The Salmon Recovery program only allows the purchase of less than fee property rights that safeguard the perpetual use requirements. The purchase of leases is not eligible.

Perpetual Public Ownership & Stewardship

Deed of Right. Lands acquired in-fee with IAC-SRFB assistance must be dedicated to habitat conservation, outdoor recreation or salmon recovery uses in perpetuity (FARR exception listed below). This is done through a recorded Deed of Right to Use Land for Habitat Conservation, Salmon Recovery, or Outdoor Recreation Purposes (pages 27, 30, 33). This Deed conveys property interests to the public forever. It must be executed and recorded by the project sponsor *after* taking title to the property but *before* applying for payment. Ideally, it is recorded at closing.

Assignment of Rights. An Assignment of Rights is a recorded legal agreement used to convey or assign to IAC-SRFB rights that protect the public interest in conservation easements acquired with IAC-SRFB funds. IAC-SRFB requires a perpetual conveyance.

The Assignment of Rights is intended to secure the public's interest in the conservation easement by ensuring the longevity of habitat, restoration and enhancement projects. To accomplish this the Assignment of Rights does four things.

1. First, it commits the sponsor holding the easement to monitor and enforce the terms of the easement.

2. Second, it gives the IAC-SRFB certain rights for access to the property covered by the conservation easement, which rights are co-held with the sponsor.
3. Third, it indemnifies the state with respect to the acts or omissions of the landowner and sponsor on the salmon recovery or habitat property.
4. Finally, it requires the sponsor to consult with IAC-SRFB with respect to any amendment of the conservation easement or conversion of the salmon recovery or habitat land to another use.

Collectively, these provisions of the Assignment of Rights ensure that the IAC-SRFB has the legal ability to step in and act if the sponsor fails to manage or defend the conservation easement as required under IAC-SRFB policies. The Assignment of Rights is to be executed and recorded by the sponsor after taking title to the conservation easement. The approved format of the Assignment of Rights is provided in Appendix G.

FARR Exception. RCW 79A.25.210 *exempts* Firearms and Archery Range Recreation (FARR) Program projects from this rule. Sponsors of such projects must repay grants accepted for properties that close less than 10 years after final reimbursement. This includes land acquisitions assisted with IAC grants. See FARR Program Manual 11 for more information.

Ineligible Land Acquisition Projects

IAC-SRFB program manuals contain specific information regarding ineligible land acquisition elements. The following is meant to provide broad guidance in this area. IAC-SRFB grants may *not* be used to acquire:

1. ***Land owned by the applicant/sponsor***, *except* when specifically required by state law (page 11).
2. ***Land to be used in support of indoor recreation***. This applies equally to existing buildings and undeveloped land where major indoor facilities will be constructed. *Excepted* are:
 - (a) Firearms and Archery Range Recreation (FARR) Program indoor shooting ranges.
 - (b) Enclosed swimming pools or ice-skating rinks that meet Land & Water Conservation Fund (LWCF) guidelines.
 - (c) Existing or future indoor facilities that are compatible with the outdoor uses for which the land was acquired, such as restrooms, storage facilities, site maintenance structure, caretaker's residence, and overnight rustic cabins.
3. ***Land with museums***, or sites to be used for museums.
4. ***Land to be used primarily for semi-professional and professional activities***, such as arts and athletics.
5. ***Land with sufficient revenue producing potential*** to finance the project's cost.
6. ***Land where exclusive use privileges will be leased***, such as boat moorage/storage or a membership golf course.
7. ***Land to be used solely for hatchery*** style fish production.
8. ***Established outdoor recreation areas*** developed under ownership or management of a public agency.
9. ***Land to mitigate the impact of a non-IAC-SRFB assisted project***, project element, or action of the project sponsor.

Federal Land and Water Conservation Fund (LWCF) monies may not be used to acquire a leasehold interest unless the land is leased from one public agency to another and includes provisions that safeguard the perpetual use requirement.

Salmon Recovery funds may not be used to acquire leasehold interests.

Federal Agencies

Federal agencies are not eligible for land acquisition grants from the IAC-SRFB. RCW 77.85.130 (9) allows federal agencies under the Salmon Recovery program to receive title to lands acquired with SRFB grants only if:

- ▶ Title is transferred to the federal agency after purchase by an eligible sponsor, and
- ▶ The federal agency agrees to comply with all the terms of the SRFB project agreement, including filing the appropriate Deed of Right to Use Land for Salmon Recovery Purposes and/or Assignment of Right for Conservation Easements.

Eligible Costs

This section describes eligible acquisition costs. Only eligible acquisition costs can be reimbursed by IAC-SRFB, or used by the sponsor as a match for an IAC-SRFB grant.

Pre-Agreement Costs. Typically, acquisition costs incurred by an applicant before signing the Project Agreement (the formal contract between IAC-SRFB and successful project applicants) are ineligible for reimbursement. However, there are some administrative and incidental costs which applicants may incur before signing the Project Agreement. These include:

- ▶ Administration
- ▶ Appraisal
- ▶ Appraisal review
- ▶ Boundary survey
- ▶ Hazardous substance assessment
- ▶ Preliminary title report, and
- ▶ Wetland delineation.

All eligible acquisition costs can be reimbursed or used as a match, if the applicant has requested and received a Waiver of Retroactivity from the Director. For more information, see page 7.

Administrative Costs. Eligible project administrative costs include actual direct costs and similarly related charges associated with purchasing land, property rights, leases, or easements. Examples include:

- | | |
|-----------------------|-------------------------------|
| ▶ Advertising | ▶ Public hearings |
| ▶ Billing preparation | ▶ Progress report preparation |
| ▶ Communication | ▶ Project administration |
| ▶ Consultation | ▶ Room rental |
| ▶ Contract award | ▶ Salaries and benefits |

- ▶ Correspondence
- ▶ Meetings
- ▶ Negotiations
- ▶ Site visits
- ▶ Taxes
- ▶ Travel costs to site/meeting.

Administrative costs are limited to no more than 5 percent of the total acquisition. The Director may approve individual project requests for increases up to 10 percent. Increases above 10 percent require IAC-SRFB approval. To request an increase above 5 percent, the sponsor must provide, in writing, justification for the increase. For example, include information on the project's complexity and any efficiency measures taken.

Property Costs. Direct costs for the purchase of property or property rights are eligible. These include fee ownership and less than fee ownership costs.

Fee ownership costs include:

- ▶ Land
- ▶ Improvements and structures

Less than fee ownership costs include:

- ▶ Easements, access
- ▶ Easements, trails
- ▶ Reserve interest deed
- ▶ Rights, development
- ▶ Rights, timber
- ▶ Easements, conservation
- ▶ Lease
- ▶ Rights, agriculture
- ▶ Rights, mineral
- ▶ Rights, water.

Incidental Costs. These land acquisition support costs do not include actual land purchase.

- ▶ Appraisal & review
- ▶ Baseline documentation for conservation easements and salmon recovery projects (page 38)
- ▶ Closing
- ▶ Demolition
- ▶ Fencing (if needed for public safety or resource protection)
- ▶ Hazardous substance environmental assessment (page 20)
- ▶ Noxious weed control (initial control, up to \$75 per acre.)
- ▶ Recording fees
- ▶ Relocation (includes administration)
- ▶ Signing
- ▶ Special reports
- ▶ Survey (if needed to settle a known boundary dispute[s] or to protect public funds)
- ▶ Taxes (compensating, excise, and pro rata taxes)
- ▶ Title reports/insurance (includes insurance and clearing of non-contested quiet title actions [quelling outstanding interests])
- ▶ Wetland delineations.

LWCF. Costs eligible in the federal Land and Water Conservation Fund Program are:

- Closing Fees
- Land and Existing Improvements
- Pro rata Real Estate Taxes
- Recording Fees
- Relocation of Eligible Occupants, including Administration.

Ineligible Costs IAC-SRFB funds and sponsor matching monies may not be used for costs peripheral to buying land. Thus, ineligible costs include indirect costs, fees for feasibility studies, court costs, and in most cases, attorney fees. Attorney fees, however, are eligible when associated with the drafting and legal review of conservation easement language. The Salmon Recovery program provides funding for assessments and feasibility studies as part of a non-capital or certain combination projects.

Waiver of Retroactivity In most cases, IAC-SRFB grant funds may be used only to reimburse expenses incurred during the period set out in the Project Agreement. This is known as the IAC-SRFB prohibition on retroactivity.

However, based on written justification by an applicant regarding the critical need to purchase property before IAC-SRFB approves funding, the Director may issue a “Waiver of Retroactivity.” Such a Waiver allows the acquisition costs incurred by the applicant to remain eligible for reimbursement through the next *two* consecutive grant cycles in the program in which the applicant seeks funds.

A Waiver is normally sought when an applicant decides that an imminent condition exists that jeopardizes the acquisition and thus decides to pursue the acquisition before funding approval. All such expenditures are made at the applicant’s risk. That is, if a grant is not awarded, the Office will not reimburse expenses. To apply for a Waiver of Retroactivity, an applicant must complete the materials in Appendix I (page 64) and send to the Office.

Waiver of Retroactivity—LWCF Waivers of Retroactivity for federal Land & Water Conservation Fund (LWCF) projects are different from other IAC waivers. The applicant must first submit a written request (see **Waiver of Retroactivity** section, above), boundary map, conceptual plan *and* an environmental assessment to the Office. Information regarding the format for the assessment is available in IAC Manual 15, *Land and Water Conservation Fund: Policies*. The Director then submits these materials to the National Park Service for approval or denial.

GENERAL POLICIES The following list summarizes many acquisition project decisions that may only be made by IAC-SRFB in a public meeting. Each is in accord with statutes, rules, and IAC-SRFB policies.

IAC-SRFB Decisions

1. Initial grant approval.
2. Any project cost increase that exceeds 10 percent of the total previously approved by IAC. SRFB does not provide project cost increases.
3. A "conversion" that changes the project site or how the site is used from that described in the Project Agreement.
4. A significant change in the project's scope. Typically, such a modification includes any that the Director feels may have changed the project's evaluation score. Not included are changes that do not significantly modify the way the public uses a facility *or* the intended habitat conservation, salmon recovery, or recreational opportunity funded by IAC-SRFB.
5. Changes in policy; for example, establishing new grant limits or eligible expenditures.

Director's Decisions The Director or staff designee makes many acquisition project decisions. The following list summarizes some of these decisions, each in accord with statutes, rules, and IAC-SRFB policies:

1. Appoint advisory committee and evaluation team members.	
2. Establish and/or waive grant program deadlines. The Office may not extend application deadlines for Salmon Recovery projects.	WAC 286-13-040(3) WAC 420-12-030 (1)
3. Authorize grant application forms.	WAC 286-04-010, 286-13-020
4. Accept or deny plans submitted to comply with grant eligibility requirements.	WAC 286-35-030
5. Make project funding recommendations to IAC-SRFB .	WAC 420-04-040
6. Require that applicants submit additional project information after approval of funding and before executing a Project Agreement.	
7. Execute Agreements for projects approved by IAC-SRFB .	WAC 286-13-060(1) WAC 420-12-050 (1)
8. Authorize cost increases of 10 percent or less of an IAC project's approved initial cost. (SRFB does not allow cost increases.)	WAC 286-04-070(3) WAC 420-12-060
9. Authorize project reimbursements.	WAC 286-13-070
10. Waive IAC sign recognition requirements.	WAC 286-13-120
11. Terminate the Project Agreement.	Project Agreement

12. Require that grant funds be repaid to IAC-SRFB if spent in a manner that conflicts with applicable statutes, rules, and/or policy manuals. WAC 286-13-100
WAC 420-12-075

13. Approve interim non-public use of an IAC assisted site.

An applicant or sponsor may request that a decision made by the Director be reconsidered. This is done by writing to the Chair of the IAC-SRFB at least thirty days before a board meeting. WAC 286-04-060(3) and 240-04-30(3)

Requests will be placed on the meeting agenda with an opportunity for the petitioner to address the board. Any subsequent IAC-SRFB decision is final.

Phased Projects

Phased, or staged, projects are subject to the following:

- Approval of any single phase is limited to that stage; no endorsement or approval is given or implied toward future stages.
- Each phase must stand on its merits as a viable project.
- Each phase must be submitted as a separate application.
- Progress on earlier stages is considered by IAC-SRFB when making decisions on current projects.

Combination Projects

Combination projects involve both land acquisition and facility development *or* land acquisition and planning *or* land acquisition and assessments and feasibility studies for salmon recovery projects. To help ensure timely completion of projects without tying up grant funds for extended periods, at least one month before IAC considers approval of funding for such projects, applicants must secure the property by one of the following methods:

1. Acquisition under the Waiver of Retroactivity policies and procedures (page 7).
2. Have property in escrow pending IAC-SRFB grant approval.
3. Obtain an option on the property that extends past the IAC-SRFB funding meeting. Execution of the option must occur within 90 days after this meeting.
4. Provide draft copies of all leases or easements to the Office for review. Execution of the leases or easements must occur within 90 days after the funding meeting.

Acquiring Easements

Acquiring less than fee simple title may be a cost effective and appropriate strategy for some acquisition projects. Policies included in this manual such as appraisal requirements, hazardous substances certifications, Deeds of right/Assignments of Right, title insurance, etc; apply equally to acquisition of easements. Sponsors are responsible to ensure that the appraisal accurately reflects the subject property and rights to be acquired.

Sponsors and the Office must also review the preliminary title report and encumbrances for consistency with the purpose of acquiring the easement. Sponsors will need to secure title insurance on the rights purchased. This report must show that the property rights are free of unacceptable liens and

encumbrances. This may involve releasing the subject portion of a larger parcel from liens at the time of closing.

Draft easement documents should be pre-approved by the Office to help ensure compliance with IAC-SRFB policies. Manual #6, Riparian Habitat Program, may also provide additional guidance to sponsors acquiring conservation easements.

Conservation Easements

IAC-SRFB allows sponsors that wish to protect habitat resources to consider less than fee simple acquisition techniques, such as conservation easements. To assist in purchasing such easements, IAC-SRFB has established three required document templates:

- Model Baseline Documentation & Narrative (Appendix G, page 38)
- Model Conservation Easement (Appendix G, page 38)
- Assignment of Right (Appendix H, page 39).

These three reports, or similar documents, are required of all sponsors acquiring conservation easements.

Trail & Access Easements

Easements are sometimes the preferred option for securing perpetual access. Easements may be desired for purposes of site management or for public recreation. At minimum easement documents must include:

1. A precise legal description
2. Statutory language necessary to convey real property interests in Washington state
3. Statement of duration
4. Statement of purpose
5. Clear description of the rights that are being conveyed
6. Provide right to prevent any activity or use of the property that is inconsistent with the purpose of the trail/access easement
7. Maintenance clause
8. Provide for a Deed of Right to the state of Washington through the IAC-SRFB, and
9. Boundary map.

Mitigation Acquisitions

Under certain conditions, IAC funds may be used to buy and/or develop land required by a mitigation plan. Typically, this occurs when a project to be developed with IAC funds eliminates a pre-existing opportunity, amenity, or function. For example, a mitigation plan may require that a wetland to be lost when an athletic field is developed be replaced with property that matches the original wetland's attributes. In such cases, a portion of the IAC grant may be used to buy and develop the replacement land. When this occurs, IAC urges sponsors to buy land that will also serve as a habitat, natural area, or recreation site.

In such cases, the maximum amount of an IAC grant allowed for mitigation is 25 percent. Any property acquired or developed this way is included in the Project Agreement.

Acquisitions for mitigation purposes are not eligible in the Salmon Recovery program.

Acquiring Publicly Owned Lands

Publicly owned lands are eligible for IAC-SRFB acquisition grants only under the following circumstances:

- State law requires that the agency owning the land must receive compensation *and*
- The land was not originally acquired by the agency for habitat conservation (for habitat conservation proposals), salmon recovery (for salmon recovery proposals), or recreation use (for outdoor recreation proposals) *and*
- The land has never been publicly managed for habitat conservation (for habitat conservation proposals), salmon recovery (for salmon recovery proposals), or recreation (for outdoor recreation proposals).

RCW 39.33.010 provides for the transfer of lands from one public body to another without compensation.

Acquisition of Structures to be Retained

A structure incidental to a project is eligible for IAC grant assistance if it will be used to support the primary habitat conservation or outdoor recreation activity at the site. The anticipated use must be clearly identified in the project application so that IAC may determine the structure's significance to the project. Support facilities may include restrooms, park offices, gathering areas, small interpretive spaces, maintenance areas, and caretaker residences.

Encumbrances

Property rights acquired with IAC-SRFB funding assistance must be free of encumbrances that limit the value or uses disproportionately to the public benefit (i.e., habitat conservation or salmon recovery values or the recreation use of a site).

Acquisition & Relocation Policies

Federal and state law requires many agencies to comply with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* (Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act (P. Law. 100-17-1987); and chapter 8.26 RCW). As such, each applicant should review chapter 8.26 RCW to determine its need to comply. Do this before submitting a land acquisition application, as IAC-SRFB is not responsible for providing advice regarding compliance. Compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act is mandatory for most recipients of federal funds.

Regardless of whether or not a sponsor follows chapter 8.26 RCW, all sponsors must still abide by the appraisal and review requirements in this manual.

Uniform Acquisition Procedures

The following procedures satisfy the acquisition requirements of the Uniform Real Property Acquisition portion of RCW 8.26.180 and chapter 468-100 WAC. While these requirements may apply to others, at minimum, agencies awarded LWCF or other federal monies must comply with these procedures:

1. The agency contacts the owner to learn if the land is for sale. The agency informs the owner that the land is under consideration for purchase by the agency. Neither purchase negotiations nor price shall be discussed at this time. The parties may, however, discuss how they will determine the purchase price.
2. The agency determines whether or not relocation of owner or tenants will be involved and provides them with a written notice describing the agency's relocation program.
3. The agency has the real estate appraised (page 16) and provides the owner with an opportunity to be present during the appraiser's inspection. (Appendix A)
4. The agency has the appraisal reviewed by an IAC-SRFB approved procedure (page 17). After receiving the reviewed (estimated) fair market value from the review appraiser, the agency may follow one of two options:
 - A. Follow these steps if the agency wishes to negotiate an option for the property before IAC-SRFB approval:
 - 1) Using the "Offer of Purchase at Estimated Just Compensation" (page 25), the agency informs the owner of the value of the property based on the results of the reviewed appraisal. In writing, the agency also offers the owner and tenants eligible relocation costs (page 11). Nonprofit organizations and others exempt from RCW 8.26 may use the "Offer to Purchase" (page 26).
 - 2) The agency secures an option to acquire the property. The option agreement must¹:
 - a. Be based on the offer to purchase.
 - b. Not commit the agency to acquire the property.
 - c. Stipulate that the cost of securing the option is to be applied to the purchase price, if the cost of the option is to be an eligible cost.
 - d. Be valid at least 40 days beyond the date an IAC-SRFB Project Agreement would be issued.
 - B. After receipt of the executed Project Agreement, follow these steps if the agency does not plan to secure an option before acquiring the property:
 - 1) Using the "Offer of Purchase at Estimated Just Compensation" (page 25), the agency informs the owner of the value of the property based on the results of the reviewed appraisal. In writing, the agency also offers the owner and tenants eligible relocation costs

¹ These elements are especially important if the sponsor does not have adequate resources to acquire the property without IAC-SRFB funds.

(page 11). Nonprofit organizations and others exempt from RCW 8.26 may use the “Offer to Purchase” (page 26).

- 2) The agency acquires the property by a Warranty Deed, easement, lease execution or other IAC-SRFB approved instrument.

Uniform Relocation Assistance

The sponsor may perform the administrative services needed to prepare a relocation assistance plan and cost estimate *if* it has a qualified agent (staff or contract). The Office must agree in advance on the qualifications of the agent to perform the work. Otherwise, the Washington State Department of Transportation (WSDOT) *must* be appointed to perform these services. The sponsor pays the cost of this service directly to WSDOT.

The sponsor must inform property owners and tenants about the relocation assistance benefits for which they are eligible.

For more information, contact WSDOT, Land Management Division, Relocation Program manager, 360/ 705-7315.

Acknowledgment & Signs

Land acquisition project sponsors *must* acknowledge the IAC-SRFB funding assistance, by program if possible. This includes:

- Prominent placement of on-site signs, unless waived by the Director. The sponsor may build such signs to harmonize with an existing design standard *or* request a standard acknowledgement sign from the Office.
- In any release or publication developed or modified for the project.
- Comments at dedication ceremonies; notify the Office at least two weeks before the ceremony.

Some habitat conservation or salmon recovery areas contain species or other resources so sensitive that it is unwise to allow access to the general public. In these cases, the sponsor should seek IAC-SRFB approval to waive signing and/or public access requirements.

Public Access

In most cases, regardless of whether the property is developed, lands acquired with IAC grant assistance must be available for public use. Use of undeveloped or partially developed recreation areas may be restricted, however, total exclusion of the general public must be avoided.

When Land Acquisition Costs Exceed Fair Market Value

IAC-SRFB accepts an appraisal as a valid estimate of a property’s value, *if* the appraisal has been reviewed and approved as described in this manual. After the appraisal (reviewed and approved), however, negotiations between the seller and sponsor may establish a higher price.

If the sponsor plans to seek IAC-SRFB reimbursement for this higher price, it must ask for approval by the Director. This written request must discuss:

- Why the property owner does not accept the appraised value, and
- Why the project sponsor and the IAC-SRFB should pay more than this estimated fair market value.

In such cases, IAC-SRFB considers both the negotiated price *and* appraised

value in establishing its reimbursement and/or grant amount.

The Director may approve paying up to 10 percent more than the appraised value of a property. The 10 percent amount is based on the appraisal (reviewed and approved) or opinion of value depending on which was used in valuing the property. Such cost adjustments are made on a parcel-by-parcel or property basis, not on the total project cost.

This approval does not include additional funds for the project; however, it does allow reimbursement based on the higher approved purchase price. IAC sponsors may seek IAC approval for any increase greater than 10 percent. Sponsors should review IAC-SRFB program policy manuals and IAC Manual #7, *Funded Projects: Policies and the Project Agreement* for information regarding cost increases for acquisition projects.

Once IAC-SRFB awards funding, a sponsor can pay more than the appraised value (reviewed and approved) without approval if it does not seek a cost increase or reimbursement for the higher value. If IAC-SRFB denies an increase, the sponsor may pay more than the appraised value if the sponsor bears the responsibility of the increased cost.

**Documentation
Required for Land
Donations**

If the project sponsor buys the land for less than estimated fair compensation and seeks a donation of credit for this value, a statement of difference in value must be supplied to IAC-SRFB. The statement must be signed by the seller and acknowledge that before the sale, the owner:

- ▶ Was aware of the estimated just compensation amount
- ▶ Was offered the estimated just compensation amount, if required (see the section titled *Acquisition & Relocation Policies*, page 11).
- ▶ Made the choice to sell for less than the estimated fair compensation voluntarily, as an act of free will.

Escrow Payments

Although IAC-SRFB local agency and nonprofit organization grant programs typically operate on a reimbursement basis, after execution of a Project Agreement, escrow payments for acquisitions may be made. Requests for such payments must include copies of:

1. A legally binding agreement between the sponsor and seller, normally called an "Escrow Agreement."
2. Evidence showing that the sponsor's share has been deposited into an "Escrow" account.
3. The "Transfer Deed(s)" (which may or may not have been executed).
4. The "Deed of Right/Assignment of Rights" (which may or may not have been executed).
5. The "Preliminary Title Insurance Report," if not previously provided.
6. The "Offer to Purchase" if required.
7. Hazardous Substances Certification.

**Compatible
Multiple Use**

After IAC-SRFB advances payment, a copy of the executed deed, recorded "Deed of Right/Assignment of Rights," and Title Insurance naming the sponsor as legal owner must be promptly provided.

IAC-SRFB allows non-outdoor recreation, salmon recovery or habitat conservation use of acquisition projects, such as timber management, grazing, and other natural resource uses. These uses must be:

- Clearly compatible with the outdoor recreation, salmon recovery or habitat conservation use approved in the Project Agreement
- Clearly secondary to the outdoor recreation, salmon recovery or habitat conservation use approved in the Project Agreement
- Approved by the Director in writing.

Interim Land Uses

Sponsors must immediately dedicate lands acquired with IAC-SRFB assistance to public use. No one must deny the public this access even in the period between acquisition and any planned development or restoration.

Exceptions. On request, the Director may, in writing, allow the following exceptions to this public access policy:

- Sensitive natural areas, salmon recovery sites and critical habitats.
- Areas where safety is a temporary issue.

Second Party Use. Sometimes a sponsor may wish to request that IAC-SRFB allow a second party's on-site activity even though the activity is not addressed in the Project Agreement. The Director may, in writing, allow this use when:

- The use is a *continuing* second party use
- Any hindrance to public use of the assisted site is minimal
- The second party's use will be phased out within *three years* of the date of acquisition
- Use of any income derived from the third party use is consistent with the IAC-SRFB income policy..

Life Estates. Under a life estate, an owner uses IAC-SRFB assisted property to the end of his or her life. IAC-SRFB allows life estates when:

- The estate does not totally limit public use of the site
- The value of the estate is not included in the property's appraisal
- The Director gives written approval of the estate's provisions.

**Estimating Land
Value**

As a part of the application process, applicants must identify one of the following as evidence of the proposed land acquisition's value:

- An Appraisal, with or without review, or
- Letter of Opinion (see Appendix E for format), or
- Estimate of Value by an agency or organization staff member.

**APPRAISAL
REQUIREMENTS**

The applicant/sponsor must obtain and pay for a real estate appraisal and review when a land acquisition is to be assisted with IAC-SRFB funds. These reports may not be procured by the seller or other party with an actual or potential interest in the sale unless approved by the Director. If IAC-SRFB awards funding for the acquisition, the cost of these reports is eligible for reimbursement even *if* incurred before execution of the Project Agreement.

IAC-SRFB recognizes the appraisal standards recommended by the current *Uniform Standards of Professional Appraisal Practice* (USPAP) publication with the following exceptions.

- Extraordinary Assumptions and Hypothetical Conditions must be found reasonable by the review appraiser;
- Appraisals must include consideration of existing encumbrances;
- The restricted format for reporting appraisals is not acceptable; and
- Appraisers must provide a point value, rather than a value range.

These exceptions are deemed necessary to ensure prudent use of public funds, and are discussed in further detail in the text below. It is the responsibility of applicants/sponsors to share these exceptions in writing with the appraisers and review appraisers who will be preparing documents for the funded project.

Appraisal reports include a statement of assumptions and limiting conditions. If the appraiser uses Extraordinary (Special) Assumptions and/or Hypothetical Conditions, the appraiser must clearly state these within the report. Additionally, the review appraiser must list all Extraordinary (Special) Assumptions and /or Hypothetical Conditions and comment on their reasonableness. If the findings are that the assumptions or conditions are not reasonable, the value of the land may not be supported and sponsors risk the burden of additional costs that are not eligible for reimbursement.

Appraisals must include consideration of any existing encumbrances that could impact property value. Applicants/sponsors should supply the appraiser with a copy of the current preliminary title report and encumbrance documents. If the appraiser assumes any encumbrances that have a detrimental effect on value will be cleared prior to closing, and consequently dismisses the value impact, the review appraiser must list those encumbrances.

Appraisals are considered to have a “shelf life” of one year from the effective date of the appraisal. Sponsors must either purchase the property within the one-year period or have a signed “purchase and sale” agreement that reflects the appraised and reviewed value. In some cases, when land values are very stable, IAC-SRFB will accept a written statement from the appraisal author certifying that land values have not changed since the effective date of the appraisal. The shelf life of an appraisal may not exceed 18 months under any circumstances. Appraisal updates are acceptable under USPAP guidelines, however a review appraisal is necessary for appraisal updates.

- Appraisal Reporting Criteria** USPAP allows three formats of appraisal reports: Self-contained, Summary and Restricted. IAC-SRFB will accept two of the three formats: Self-contained and Summary. Project sponsors must choose the appropriate reporting method established by USPAP based upon the following criteria:
- Self-Contained Appraisal Report*: Used if the appraisal problem involves partial land takes, acquisitions involving damages, conservation or other easements, complex appraisal issues, etc.
 - Summary Appraisal Report*: Used if the appraisal problem involves only “whole takes” of the subject property. In other words, use this report when non-complex acquisition of an entire parcel occurs with no partial takings or resulting damages to remaining properties.
 - Restricted Appraisal Report*. IAC-SRFB will not accept appraisals reported in the restricted format.

In cases where the estimated value of the subject property does not exceed \$2,500, project sponsors are exempt from having to meet USPAP reporting standards. In lieu of normal reporting procedures, a report may be filed that:

- Includes the preparer’s name, experience and qualifications.
- Includes a description of the methods and factors used to reach the conclusion. This description must have enough detail to allow IAC to understand how the preparer used market information to decide fair market value.

Appraisers must provide a point value, rather than a value range. Example: \$257,000 rather than \$240,000 to \$270,000.

- Appraisal Reviews** Appraisals valuing IAC-SRFB funded acquisitions require review by another eligible appraiser (see next section, *Appraiser Qualifications*). Values established by appraisal review form the basis of the estimated fair market value and subsequent reimbursement.
1. Appraisal review reporting requirements are established by USPAP.
 2. If the value of the appraisal review differs from the original appraisal, the reviewer must adhere to USPAP Standards.
 3. Appraisal reviews must include desk review and may include field inspections of the subject properties and comparables.

- Appraiser’s Qualifications** *Appraisers*. Chapter 18.140 RCW, Certified Real Estate Appraiser Act, establishes three certification or license categories. Sponsors, or applicants must select an appraiser with appropriate certifications or licenses to perform IAC-SRFB assisted acquisitions.
1. *State-certified general real estate appraiser* (license number begins with 270-11): Eligible to develop and communicate real estate appraisals of all types of properties.
 2. *State-certified residential real estate appraiser* (license number begins with 270-17): Eligible to develop and communicate real estate appraisals of all types of *residential* property of one to four units without regard to transaction value or complexity and *nonresidential* property having a transaction value less than \$250,000.

3. *State licensed real estate appraiser* (license number begins with 270-16): Eligible to develop and communicate real estate appraisals of noncomplex one to four residential units having a transaction value less than one million dollars, complex one to four residential units having a transaction value less than \$250,000, and nonresidential property having a transaction value less than \$250,000.

Agency staff, may perform appraisals, but must meet the above licensing or certification requirements.

Review Appraisers. IAC views the estimated fair market value of real property as the value established by a second appraiser's review of an eligible appraisal. Project sponsors, or applicants, must use the same methodology and criteria for selecting a review appraiser as used for selecting an appraiser.

1. A state-certified general real estate appraiser is required (by statute) to establish the estimated fair market value of a property because of land value, then another state-certified general real estate appraiser must perform the appraisal review.
2. Appraisers possessing a higher category of license or certification can be selected to review less complex appraisals. For example, if a state licensed real estate appraiser (lowest category) is contracted to perform an appraisal of nonresidential property having a value of less than \$250,000, a sponsor, or applicant may select from any of the three license or certification category appraisers.
3. Review appraisers cannot be selected from the same firm, organization, or agency as the appraiser.
4. Agency staff, may perform review appraisals, but must meet the above licensing or certification requirements.

USER FEES AND OTHER INCOME

User or other fees may be charged in connection with areas and facilities developed or acquired with IAC-SRFB grants. (*Excepted* are Firearms and Archery Range Recreation Program safety classes –firearm and/or hunter– for which a *facility/range* fee must not be charged — RCW 79A.25.210, ¶8.) Such fees must be:

- ▶ Proportional to the value of the service or opportunity provided
- ▶ Within the prevailing range of public facility fees in the area for similar services or opportunities.
- ▶ Compatible with the element(s) defined in the Project Agreement.

Sponsors shall not express a preference for users of IAC-SRFB grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) *except* that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, IAC-SRFB discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities. [WAC 286-13-115(2)].

Regardless of whether income or fees in an IAC-SRFB assisted area (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state law [WAC 286-13-110(2)], the revenue may only be used to offset:

- The Sponsor's matching funds; and/or;
- The Project's total cost; and/or
- The expense of operation, maintenance and/or repair of the facility or program assisted by the IAC-SRFB grant; and/or
- The expense of operation and maintenance of other units in the Sponsor's park and recreation, salmon recovery and/or habitat conservation system; and/or
- Capital expenses for similar acquisition and/or development.

CIVIL RIGHTS

Chapter 49.60 RCW is Washington's Law Against Discrimination. It provides broad protection from bias. Among the many rights provided are equal opportunity in real estate transactions, credit transactions, and the right to enjoy public accommodations.

To obtain more information on these and related laws, contact the Washington State Human Rights Commission office in your area.

INSPECTIONS	<p>Office staff may visit each acquisition project site as follows:</p> <ol style="list-style-type: none"> 1. <i>Pre-award Visit.</i> Made during the application phase, normally with the applicant. 2. <i>Post Completion Compliance Visit.</i> Performed periodically to ensure the site is kept as described in the Project Agreement.
HAZARDOUS SUBSTANCES	<p>Any entity that acquires property may be subject to major hazardous waste liabilities, according to the Model Toxics Control Act, RCW 70.105D. IAC-SRFB urges applicants to carefully consider the following requirement before applying for funding assistance.</p>
Certification	<p>Sponsors that receive funding assistance to buy property must complete a Hazardous Substances Certification for each parcel (page 37)) and provide the Environmental Assessment that supports the findings. The certification must be submitted before IAC-SRFB makes its final reimbursement. The certification must state that the parcel meets current state and federal standards for allowed levels of certain substances. The standards apply equally to substances that:</p> <ul style="list-style-type: none"> ▸ <i>Are</i> hazardous, toxic, harmful, or dangerous ▸ <i>Are designated as</i> hazardous, toxic, harmful, or dangerous ▸ <i>Have components that are</i> designated as hazardous, toxic, harmful, or dangerous ▸ <i>Are subject to regulation as</i> hazardous, toxic, harmful, or dangerous ▸ Are regarded as a pollutant by any federal, state, or local law, regulation, statute, or ordinance.
Hazardous Substances Support Documentation	<p>All sponsors must attach an environmental assessment to the Hazardous Waste Certification Form (Appendix F), submitted to IAC-SRFB when the sponsor requests reimbursement. The American Society of Testing Materials recognizes a national standard related to environmental assessments. A Phase 1 environmental assessment is a file review of known and documented historical uses of a site. It includes a title search and review of federal, state and/or local records that would indicate if any hazardous materials had been found, or if there was a reason to suspect hazardous materials had been present at some time.</p> <p>An example would be an underground storage tank identified by the Department of Ecology, or an old dumpsite identified by the local department of health. Sponsors are strongly encouraged to include an on-site inspection for evidence of past activity or current dumping. Sponsors may complete the assessment using agency or organizational staff.</p> <p>If any evidence of hazardous substances appears in the Phase 1 assessment, then a Phase 2 assessment is warranted . Sponsors should consult with a qualified specialist for Phase 2 assessment obligations. Careful review of the section on Buying Contaminated Property is essential if hazardous substances are found. A typical outline for an environmental assessment is provided in Appendix J, page 68.</p>

**Buying
Contaminated
Property**

Land that contains any of the substances listed in the **Certification** section, above, may be eligible for IAC-SRFB funding assistance. That is, the Director may write approval for the purchase of land with these substances if presented with an environmental assessment. The assessment must discuss clean-up costs and give clear evidence that cleansing can be finished quickly. If the Director requests, the sponsor must provide additional related information to help in making a decision.

Once the Director approves purchase of a contaminated site, the sponsor may be reimbursed up to 90 percent of eligible costs *before* the site meets the standards for acceptable contamination levels. Once these standards have been met, the Office will reimburse the remaining 10 percent.

In estimating fair market value, IAC-SRFB will only consider land appraised *as if it were clean*. This is the maximum amount IAC-SRFB will reimburse. Furthermore, IAC-SRFB will not consider cost increases for expenses related to clean-up or a seller's desire to recover clean-up costs.

This leaves applicants/sponsors with two options. First, the seller may agree to do all required clean-up *before* the sale, and second, the sponsor may do clean-up *after* the sale.

IAC-SRFB *strongly* advises applicants/sponsors to buy land that has never been contaminated or is certified as meeting current state and federal standards. Clean-up costs are very hard to predict. Attempts to clean-up a site can result in substantial expenses that are not eligible for IAC-SRFB reimbursement.

Eligible Costs

Environmental Assessment Costs. Some environment assessment costs related to hazardous substances are eligible for reimbursement. These costs may be reimbursed up to 10 percent of the estimated fair market value of the property, appraised as if it were clean. With adequate justification, the Director may write approval for assessment costs over 10 percent. Eligible hazardous substance environmental assessments costs are:

- Chain of Title Report
- Preliminary Investigation/Audit of Site
- Environmental Reports and Assessments
- Invasive testing, including test pits, test wells, and other drilling procedures
- Chemical analysis of water, soil, waste materials, etc.
- Leak testing of underground storage tanks
- Monitoring and testing of clean-up when done by a seller.

Clean-Up Costs. Clean-up costs are eligible for reimbursement. The amount eligible is based on the estimated fair market value appraised as if it were clean.

**CONTRACT OR
INSTALLMENT
SALES**

IAC-SRFB will not financially assist land bought on a contract or installment basis. Full payment must be made to the seller within the agreement reimbursement period. This ensures that the sponsor:

- Has clear ownership of the property
- Can meet the "Deed of Right" requirements, that is, convey use of the property to the state forever, for outdoor recreation, salmon recovery or habitat conservation purposes.

IAC-SRFB recognizes that this may be an obstacle when buying from an owner who, for tax reasons, wants to sell on a multi-year installment or contract basis only. Private non-profit land trusts may offer a solution to this problem for state or local agencies submitting BFP, LWCF, or WWRP projects by acting as an intermediary to the transaction. For example, the land trust may contract to purchase the property on a seller financed basis with note payments scheduled according to the seller's tax needs. The land trust then sells the property to the sponsoring agency on a lump sum basis, while retaining liability for the note payments.

If the seller requests, the land trust may provide collateral in several ways, other than using the property itself. For example, the trust could arrange for a letter of credit in favor of the seller to secure the note. An alternative is for the trust to purchase a certificate of deposit which can be assigned to the seller for security purposes. Normally, either of these cash collateral methods of security is acceptable to sellers. Both would result in the acquisition of the land free of purchase money encumbrances.

These procedures are suggested only to broaden the options of applicants as they seek to acquire important outdoor recreation and habitat conservation land. Presently this option is only available to applicants for the BFP, LWCF or WWRP.

BOUNDARY MAPS

IAC-SRFB requires sponsors to submit a boundary map of each parcel/property acquired. The boundary map and/or attachments must include the following:

1. IAC-SRFB project number and name
2. Date of the map preparation
3. Adjoining streets and roads.
4. The lands acquired and protected under the Deed of Right or Assignment of Rights. To make sure the property is clearly shown, the following methods of identification are acceptable:
 - Deed references.
 - Adjoining ownerships,
 - Adjoining water bodies or other natural landmarks.
 - Latitude-longitude of cardinal points
 - Survey information, or
 - Measurements from permanent locators may also be used.

5. The map should also identify the location of all known easements, outstanding rights, deed/lease restrictions, reversionary interests, etc.

A survey is not required, however if a survey has been completed with IAC-SRFB assistance, a copy must be submitted to The Office.

Appendix A

STATEMENT OF ACCOMPANIMENT

Date:

Name of Owner:

Appraiser:

Project Sponsor:

Dear:

The Project Sponsor has requested that I appraise the following property:

According to the records at the _____ County Auditors Office, you are the owner of the above-mentioned property. In compliance with the State and/or Federal regulations, the appraiser must ask if the owner would like to accompany him/her when he/she inspects the property.

I plan to appraise the property on _____, and this letter is an invitation for you to go with me when I appraise the property. Please indicate below whether or not you wish to accompany me and return the letter to me as soon as possible. If you do wish to be present but cannot make the set date and time, please call me at _____.

Sincerely yours,

Reply by the owner

I have read the above letter and I ☐ do, ☐ do not wish to accompany the appraiser to inspect the property.

(Signature of Owner)

Appendix B-1

OFFER OF PURCHASE AT ESTIMATED JUST COMPENSATION

Sample Letter

Date of Offer

Property Owner
Address

RE: Offer of Purchase at Estimated Just Compensation

Dear Property Owner:

This letter is to advise you of the estimated just compensation for your real property as described herein (or attached) and the offer to purchase the property at no less than the estimated just compensation.

In compliance with State and Federal law, you are advised that the estimate of just compensation for fee interest in your property is: \$_____.

You are hereby offered \$ (Estimated Just Compensation) for your property which is the *estimated* Fair Market Value of your real property herein (or attached) described.

Property description paragraph or reference to attachment.

Please acknowledge receipt of this letter by completing the following section:

STATEMENT OF OWNER

I have read the statement of Estimated Just Compensation above	T []	F []
I have been offered, at a minimum, the Estimated Just Compensation	[]	[]
There are no persons living on the property	[]	[]
There are no businesses being conducted on the property by others	[]	[]
The following are living or are conducting business on the property: (Including owner if in occupancy) Give name and address:		

Signed (owner)

Please retain this letter for your records, and return a completed copy to me by_____. If you have any questions please call me.

Sincerely,

Public Agency

NOTE: This offer in effect opens official negotiations with the owner or his/her representative. No discussions with the owner prior to this time should include purchase price (page 12).

Appendix B-2

OFFER TO PURCHASE
(For Use by Nonprofit Organizations)*Sample Letter*

Date of Offer

Property Owner
Address

RE: Offer to Purchase

Dear Property Owner:

This letter is to advise you of the estimated fair market value of your real property as described herein (or attached) and the offer to purchase the property.

In compliance with IAC-SRFB policy, you are advised that the estimate of just compensation for fee interest in your property is: \$_____.

We hereby offer \$ (_____) for your real property herein (or attached) described.

Property description paragraph or reference to attachment.

Please acknowledge receipt of this letter by completing the following section:

STATEMENT OF OWNER

	T	F
I have read the offer to purchase, stated above	<input type="checkbox"/>	<input type="checkbox"/>
There are no persons living on the property	<input type="checkbox"/>	<input type="checkbox"/>
There are no businesses being conducted on the property by others	<input type="checkbox"/>	<input type="checkbox"/>
The following are living or are conducting business on the property: (Including owner if in occupancy) Give name and address:		

Signed (owner)

Please retain this letter for your records, and return a completed copy to me by _____. If you have any questions please call me.

Sincerely,

Nonprofit Organization

Appendix C-1, page 1 of 3

Format. The *Deed of Right* must be recorded with the county. As such, it must meet the format requirements of RCW 65.04.045, including proper display of the address of the party to whom it must be returned (in this case, IAC); page, margin, and font size; titles, etc. Check with the county auditor or recording officer for specific requirements.

DEED OF RIGHT TO USE LAND FOR
CONSERVATION PURPOSES

The Grantor, _____ for and in consideration of monies coming in whole or in part from the Habitat Conservation Account of the General Fund of the State of Washington and in fulfillment of terms of the Project Agreement identified below, conveys and grants to the State of Washington individually and as the representative of all the people of the State, the right to use the real property described below forever for conservation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Interagency Committee for Outdoor Recreation entitled

_____ Project Number _____ signed by the Grantor on the ____ day of ____ and by the Interagency Committee on the ____ day of _____ and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for conservation purposes herein granted unless the State, through the Interagency Committee for Outdoor Recreation or its successors, consents to the inconsistent use, which consent shall be granted only upon conditions which will ensure that other conservation land of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for conservation purposes for which state assistance was originally granted will be substituted in the manner provided in RCW 79A.25.100 for marine recreation land, whether or not the real property covered by this deed is marine recreation land. RCW 79A.25.100 reads as follows:

Appendix C-1, page 2 of 3

"Marine recreation land with respect to which money has been expended under RCW 43.99.080 (recodified as RCW 79A.25.080) shall not, without the approval of the committee, be converted to uses other than those for which such expenditure was originally approved. The committee shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location."

The real property covered by this deed is described as follows:

Appendix C-1, page 3 of 3

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement.

Dated this _____ day of _____, 20____

By: _____
Title

ATTEST:

STATE OF WASHINGTON)

: SS.

COUNTY OF _____)

THIS IS TO CERTIFY that on this ____ day of _____, 20____, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

_____ to me. This individual is known to be the _____, of the _____ that executed the foregoing deed and acknowledged to me that they signed and sealed the same as the free and voluntary act and deed of said

_____ and on oath stated that they were authorized to execute said instrument and that the seal affixed is the seal of said

_____.

WITNESS my hand and official seal the day and year in this certificate first above written.

_____ ,

Notary Public in and for the State of Washington, residing in

_____ County.

My commission expires _____.

Appendix C-2, page 1 of 3

Format. The *Deed of Right* must be recorded with the county. As such, it must meet the format requirements of RCW 65.04.045, including proper display of the address of the party to whom it must be returned (in this case, SRF Board); page, margin, and font size; titles, etc. Check with the county auditor or recording officer for specific requirements.

DEED OF RIGHT TO USE LAND FOR
SALMON RECOVERY

The Grantor, _____ for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the Project Agreement identified below, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled _____ Project Number _____ signed by the Grantor on the ____ day of _____ and by the Salmon Recovery Funding Board on the ____ day of _____ and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted.

The conditions are that the substituted salmon recovery and conservation land must be: (1) of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent (2) qualities, (3) characteristics and (4) location for salmon recovery and conservation purposes for which state assistance was originally granted.

Appendix C-2, page 2 of 3

The real property covered by this deed is described as follows:

Appendix C-2, page 3 of 3

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement.

Dated this _____ day of _____, 20____

By: _____
Title

ATTEST:

STATE OF WASHINGTON)

: SS.

COUNTY OF _____)

THIS IS TO CERTIFY that on this ____ day of _____, 20____, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

_____ to me. This individual is known to be the _____, of the _____ that executed the foregoing deed and acknowledged to me that they signed and sealed the same as the free and voluntary act and deed of said

_____ and on oath stated that they were authorized to execute said instrument and that the seal affixed is the seal of said

_____.

WITNESS my hand and official seal the day and year in this certificate first above written.

_____.

Notary Public in and for the State of Washington, residing in

_____ County.

My commission expires _____.

Appendix C-3., page 1 of 3

Format. The *Deed of Right* must be recorded with the county. As such, it must meet the format requirements of RCW 65.04.045, including proper display of the address of the party to whom it must be returned (in this case, IAC); page, margin, and font size; titles, etc. Check with the county auditor or recording officer for specific requirements.

DEED OF RIGHT TO USE LAND
FOR PUBLIC **RECREATION** PURPOSES

The Grantor, _____ for and in consideration of monies coming in whole or in part from the Outdoor Recreation Account of the General Fund of the State of Washington and in fulfillment of terms of the Project Agreement identified below, conveys and grants to the State of Washington individually and as the representative of all the people of the State, the right to use the real property described below forever for the outdoor recreation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Interagency Committee for Outdoor Recreation entitled

_____ Project Number _____ signed by the Grantor on the ____ day of _____ and by the Interagency Committee on the ____ day of _____ and the application and supporting materials which are on file with the Grantor and the state in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for public outdoor recreation herein granted unless the state, through the Interagency Committee for Outdoor Recreation or its successors, consents to the inconsistent use, which consent shall be granted only upon conditions which will ensure that other outdoor recreation land of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent usefulness and location for the public recreation purposes for which state assistance was originally granted will be substituted in the manner provided in RCW 79A.25.100 for marine recreation land, whether or not the real property covered by this deed is marine recreation land. RCW 79A.25.100 reads as follows:

Appendix C-3, page 2 of 3

"Marine recreation land with respect to which money has been expended under RCW 43.99.080 (recodified as RCW 79A.25.080) shall not, without the approval of the committee, be converted to uses other than those for which such expenditure was originally approved. The committee shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location."

The real property covered by this deed is described as follows:

Appendix C-3, page 3 of 3

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement.

Dated this _____ day of _____, 20____

By: _____
Title

ATTEST:

STATE OF WASHINGTON)
: SS.
COUNTY OF _____)

THIS IS TO CERTIFY that on this ____ day of _____, 20____, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

_____ to me. This individual is known to be the _____, of the _____ that executed the foregoing deed and acknowledged to me that they signed and sealed the same as the free and voluntary act and deed of said

_____ and on oath stated that they were authorized to execute said instrument and that the seal affixed is the seal of said

_____.

WITNESS my hand and official seal the day and year in this certificate first above written.

_____ ,

Notary Public in and for the State of Washington, residing in

_____ County.

My commission expires _____.

Appendix D.

IAC FORMAT FOR:

LETTER OF OPINION

Date: _____

For: _____

Re: Property Located at _____

Dear _____:

In accordance with your request, I have made a feasibility study of the above referenced property as of (date) . This feasibility study consisted of *(state specifically what steps the appraiser performed in his study, and what analysis, if any, he made)*. It should be clearly understood that an appraisal has not been made of the above referenced property, and that this letter does not constitute an appraisal report.

Based upon this preliminary study, it is the appraiser's belief that if an appraisal were made, the final valuation estimate as of (date) would probably be in the range of approximately \$_____ to \$_____. (See note A)

It should be clearly understood that the this approximate range of value is subject to adjustment upon completion of an appraisal.

Very truly yours,

(Signature)

Note A: The letter of opinion never refers to a specific value.

Appendix E.

HAZARDOUS SUBSTANCES CERTIFICATION

The _____ (project sponsor), as the recipient of funding assistance as specified in IAC project agreement # _____ titled _____ does hereby give assurance that it does not know and has no reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for remedial action, was released or disposed of, in or at the property or properties that are included in the above-referenced project agreement. The project sponsor further warrants that it has obtained representations and warranties concerning the environmental condition of the property from the seller and has inspected the property to the scope and extent described in the attached Environmental Assessment Report.

Signature

Title

Date

Appendix F.

BASELINE DOCUMENTATION

Completing a baseline documentation allows you to record and characterize the environmental aspects of the Property at the time of easement acquisition. Documentation provides the basis for future easement monitoring and, if necessary, enforcement. It is particularly important in court in the event of an easement violation. Baseline documentation is also required by the IRS for any tax-deductible easement gifts.

IAC requires that a baseline documentation be completed on all properties with a conservation easement. If the baseline documentation is not filed as an attachment to the conservation easement it must be referenced in the conservation easements as to its existence and whereabouts. In determining where the original baseline documentation will reside, you may want to consider who the holder of the easement is and who may be undertaking future compliance monitoring and enforcement activities. IAC must be provided with a copy of the baseline documentation.

Baseline data should characterize and document the condition of property features protected or affected by the easement terms. Baseline documentation should be descriptive and include maps, plans, photos (aerials or ground), and narratives. Documentation methodology should be objective and reproducible so that future monitoring can be repeated in a comparable manner. Include ecological, biological, geological, land use and other property features. The level of detail for each category may vary depending on physical land features and the specific terms of the easements. Generally, the more restrictive the terms of the easements, the more detailed the documentation should be.

Using your own format. If you choose to use your own format, the baseline documentation must include:

- ☒ USGS quad map (1:24,000, 7.5”), showing property lines and other contiguous or nearby protected areas, and a parcel map or county assessors map showing property boundaries.
- ☒ A map of the area drawn to scale showing all existing human-made improvements or incursions (such as roads, buildings, fences, or structures), vegetation and wildlife (species locations, breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and riparian areas).
- ☒ A narrative description of the property protected by the conservation easement (at or near the time of easement purchase). Include habitat values, unique and existing land features, natural resources (include vegetation, and fish and wildlife), water quality and quantity, and historic and current land uses.
- ☒ Photographs (black and white) taken at permanent photopoint locations on the property that adequately depict the conservation easement area and natural resources to be protected. The photographs should document the condition of the resource at or near the time of easement purchase. Include aerial photos with property boundaries indicated (if possible).

The Land Trust Alliance has two excellent references regarding baseline documentation, monitoring, and stewardship of easements: *Managing Conservation Easements*, *Sampling Policies and Forms from the Land Trust Community*; and *The Conservation Easement Stewardship Guide*. *Designing, Monitoring, and Enforcing Easements*.

Format. The *Assignment of Rights* must be recorded with the county. As such, it must meet the format requirements of RCW 65.04.045, including proper display of the address of the party to whom it must be returned (in this case, IAC); page, margin, and font size; titles, etc. Check with the county auditor or recording officer for specific requirements.

**ASSIGNMENT OF RIGHTS
INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION**

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the ____ day of _____, 20__, by _____, a _____ ("Assignor"), to and in favor of THE STATE OF WASHINGTON ("State"), through the Interagency Committee for Outdoor Recreation ("IAC").

RECITALS

A. Assignor has entered into a conservation easement ("Conservation Easement") with [a] certain property owner[s] (collectively "Owner") in the _____ portion of the _____ watershed (W.R.I.A. number # _____ under WAC 173-500-040) in _____, Washington. The name[s] and address[es] of the Owner and the recording number of the Conservation Easement are set forth in *Exhibit 1* attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement are set forth in *Exhibit 2* attached hereto and incorporated herein.

B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between the recipient of IAC funds ("Sponsor") and the State through the IAC entitled _____ Project Number _____ dated _____, 20__ and the application and supporting materials which are on file with the State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection [and restoration] [and enhancement] [, restoration and enhancement] of habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor to assign to the State certain rights for access to and stewardship of the property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Habitat Conservation Account administered by the IAC. Such rights are valuable to the State in connection with ensuring protection of habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of the Assignor under the Conservation Easement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the State agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the Habitat Conservation Account of the General Fund of the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the State individually, and as the representative of all the people of the State, the following rights (collectively referred to as "Rights") under the Conservation Easement the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference:

a. **Access.** To enter the Conservation Zone, as defined in the Conservation Easement, through the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Injunction and Restoration.** In the event of the failure of Assignor to undertake such injunction and restoration, to enjoin any use of, or activity in, the Conservation Zone which is inconsistent with the terms of the Conservation Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Conservation Zone as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.

c. **Enforcement.** In the event of the failure of Assignor to undertake such enforcement, to enforce the terms of the Conservation Easement, and thereby assume the Assignor's remedies under the Conservation Easement.

d. **Amendments.** To review and approve any proposed amendments to the Conservation Easement. Review and approval by IAC's Director will be for compliance with the terms of the Project Agreement.

e. **Termination For Reasons of Impracticability.** To review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Conservation Zone from the terms of the Conservation Easement, before expiration of the term of the Conservation Easement for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve.

f. **Stewardship Plans.** To review any Stewardship Plans, including habitat restoration and enhancement plans, as defined in the Conservation Easement. Review by IAC's Director will be for compliance with the terms of the Project Agreement.

These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **State's Exercise of Rights.** The State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.

Appendix G-1, page 3 of 6

3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the State that:

a. Owner, identified in *Exhibit 1* attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.

c. Assignor shall comply with, and IAC shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.

d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.

5. **Indemnity.** Assignor shall defend, protect and hold harmless the State, IAC, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner.

6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Conservation Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of, the IAC in the selection of any replacement property and to assign to the State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to the State under the Conservation Easement, without the express written consent of the IAC's Director.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement, and shall expire upon the expiration date of the Conservation Easement (if any).

Appendix G-1, page 4 of 6

9. **Disputes.** Any disputes between Assignor and the State under this Assignment shall be governed by the terms of the Project Agreement.

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the State involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

ASSIGNOR:

STATE:

_____,

THE STATE OF WASHINGTON, through
its Interagency Committee for Outdoor
Recreation

By _____

By _____
Its *Director*

Its _____

ATTACHMENTS:

Exhibit 1 - Owner and Conservation Easement Recording Number

Exhibit 2- Legal Description of Property Subject to Conservation Easement

Appendix G-1, page 5 of 6

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

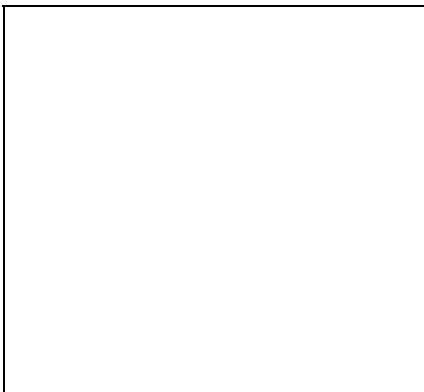
Print Name

My commission expires

STATE OF WASHINGTON)
) ss:
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Director of the Interagency Committee for Outdoor Recreation of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires

Appendix G-1, page 6 of 6

EXHIBIT 1

OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Name(s): _____

Address: _____

Recording No.: _____

EXHIBIT 2

***LEGAL DESCRIPTION FOR PROPERTY
SUBJECT TO CONSERVATION EASEMENT***

DESCRIPTION OF CONSERVATION ZONE

Appendix G-2, page 1 of 6

Format. The *Assignment of Rights* must be recorded with the county. As such, it must meet the format requirements of RCW 65.04.045, including proper display of the address of the party to whom it must be returned (in this case, SRFB); page, margin, and font size; titles, etc. Check with the county auditor or recording officer for specific requirements.

ASSIGNMENT OF RIGHTS—SALMON RECOVERY FUNDING BOARD

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the ____ day of _____, 20__, by _____, a _____ ("Assignor"), to and in favor of THE STATE OF WASHINGTON ("State"), through the Salmon Recovery Funding Board ("SRFB"), administered by the Interagency Committee for Outdoor Recreation ("IAC").

RECITALS

A. Assignor has entered into a conservation easement ("Conservation Easement") with [a] certain property owner[s] (collectively "Owner") in the _____ portion of the _____ watershed (W.R.I.A. number # _____ under WAC 173-500-040) in _____, Washington. The name[s] and address[es] of the Owner and the recording number of the Conservation Easement are set forth in *Exhibit 1* attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement are set forth in *Exhibit 2* attached hereto and incorporated herein.

B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between the recipient of SRFB funds ("Sponsor") and the State through the SRFB entitled _____ Project Number _____ dated _____, 20__ and the application and supporting materials which are on file with the State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection [and restoration] [and enhancement] [, restoration and enhancement] of habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor to assign to the State certain rights for access to and stewardship of the property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Salmon Recovery Funding Board administered by the IAC. Such rights are valuable to the State in connection with ensuring protection of habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of the Assignor under the Conservation Easement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the State agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the State individually, and as the representative of all the people of the State, the following rights (collectively referred to as "Rights") under the Conservation Easement the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference:

a. **Access.** To enter the Conservation Zone, as defined in the Conservation Easement, through the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Injunction and Restoration.** In the event of the failure of Assignor to undertake such injunction and restoration, to enjoin any use of, or activity in, the Conservation Zone which is inconsistent with the terms of the Conservation Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Conservation Zone as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.

c. **Enforcement.** In the event of the failure of Assignor to undertake such enforcement, to enforce the terms of the Conservation Easement, and thereby assume the Assignor's remedies under the Conservation Easement.

d. **Amendments.** To review and approve any proposed amendments to the Conservation Easement. Review and approval by IAC's Director will be for compliance with the terms of the Project Agreement.

e. **Termination For Reasons of Impracticability.** To review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Conservation Zone from the terms of the Conservation Easement, before expiration of the term of the Conservation Easement for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve.

f. **Stewardship Plans.** To review any Stewardship Plans, including habitat restoration and enhancement plans, as defined in the Conservation Easement. Review by IAC's Director will be for compliance with the terms of the Project Agreement.

These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **State's Exercise of Rights.** The State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.

Appendix G-2, page 3 of 6

3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the State that:

a. Owner, identified in *Exhibit 1* attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.

c. Assignor shall comply with, and the SRFB and IAC shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.

d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.

5. **Indemnity.** Assignor shall defend, protect and hold harmless the State, the SRFB, the IAC, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner.

6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Conservation Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of, the SRFB and the IAC in the selection of any replacement property and to assign to the State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to the State under the Conservation Easement, without the express written consent of the IAC's Director.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement, and shall expire upon the expiration date of the Conservation Easement (if any).

Appendix G-2, page 4 of 6

9. **Disputes.** Any disputes between Assignor and the State under this Assignment shall be governed by the terms of the Project Agreement.

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the State involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

ASSIGNOR:

STATE:

_____,

THE STATE OF WASHINGTON, through
its Salmon Recovery Funding Board,
administered by the IAC

By _____

By _____
Its *Director*

Its _____

ATTACHMENTS:

Exhibit 1 - Owner and Conservation Easement Recording Number

Exhibit 2- Legal Description of Property Subject to Conservation Easement

Appendix G-2, page 5 of 6

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires _____

[illegible]

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Director of the Salmon Recovery Funding Board, administered by the IAC of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires

Appendix G-2, page 6 of 6

EXHIBIT 1

OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Name(s): _____

Address: _____

Recording No.: _____

EXHIBIT 2

***LEGAL DESCRIPTION FOR PROPERTY
SUBJECT TO CONSERVATION EASEMENT***

DESCRIPTION OF CONSERVATION ZONE

Appendix H, page 1 of 12.

CONSERVATION EASEMENT REQUIREMENTS

Introductory Key

☒ = **Required** provisions☐ = Provisions to **strongly consider**

“Arial typeface” = Sample language

[Italicized/bracketed language] = text choices which may or may not applyRecitals:
Background
Information

- ☒
- Separately identify the portion of the property that contains the habitat or conservation value that will be protected, or protected and restored or enhanced, by the conservation easement.

The portion of the Property containing conservation values and protected by this Easement is described in Exhibit ___ (description) and shown in Exhibit ___ (site map), which are attached and incorporated into this Easement by this reference.

- ☒
- Note conservation values provided by the property.

The Conservation Zone provides habitat and other natural values (collectively, the "Conservation Values"), as more particularly described in Recitals ___ and ___ below.

- ☒
- Refer to the baseline documentation (page 38).

The specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated _____ *[on file at the offices of Grantee][attached hereto as Exhibit ___]* and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of conservation easement acquisition. and which is intended to serve an objective information baseline for monitoring compliance with the terms of this grant.

Conveyance and
consideration

- ☒
- Track statutory language necessary to convey real property interests in Washington State.
-
- ☒
- Identify term of conservation easement (e.g., 30 year-term or in perpetuity).

Purpose

- ☒
- Identify habitat protection as one of the specific purposes of the conservation easement.

Appendix H, page 2 of 12.

Purpose. The purpose of this Easement is to assure that the Conservation Zone will be retained predominantly in its natural condition *[as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,"]*, and to prevent any use of, or activity on, the Conservation Zone that will *[significantly]* impair or interfere with the Conservation Values of the Conservation Zone (the "Purpose"). This Purpose includes the protection of habitat as defined in Recital I.____ of this Easement. Grantor intends that this Easement will confine the use of, or activity on, the Conservation Zone to such uses and activities that are consistent with this Purpose. *[Except as specifically provided for in Section __, t][T]*his Easement shall not be construed as affording to the general public physical access to the Property.

- ☒ Identify, as appropriate, any plans to monitor, protect, maintain, restore or enhance the Conservation Zone.

Stewardship Plan. To further this Purpose, Grantee may develop a plan for stewardship of the Conservation Zone (the "Stewardship Plan") *[which is attached as Exhibit __ and incorporated into this Easement by this reference]*. The Stewardship Plan *[is intended to describe][describes]* activities to monitor, protect, maintain, and *[restore] [enhance]* the original and natural conditions of the Conservation Zone.

**Rights Conveyed
to Grantee**

- ☒ List the rights that are being conveyed to the organization holding the conservation easement (Grantee).

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- ☒ Provide right of organization to preserve conservation values of the property.

[Identification] Protection [Restoration] [Enhancement]. To *[identify,]* preserve and protect *[in perpetuity]* and to *[restore] [enhance] [maintain] [and manage]* the Conservation Values of the Conservation Zone.

- ☒ Provide right of organization to enter the land for inspection and enforcement, and where applicable, environmental monitoring, maintenance, restoration, and enhancement.

Access.

1. To enter the Property *[annually]*, at a reasonable time and upon prior written notice to Grantor, for the purpose of making a general inspection of the Conservation Zone to monitor compliance with this Easement.

Appendix H, page 3 of 12.

2. To enter the Property[, or allow Grantee's invitees or licensees to enter the Property,] at reasonable times and upon prior written notice to Grantor, for the purpose of *[restoring]* *[enhancing]* *[maintaining]* *[managing]* the Conservation Values of the Conservation Zone through implementation of the Stewardship Plan.
3. To enter the Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

- ☒ Provide right to injunction to prevent any activity on or use of the property that is inconsistent with the purpose of the conservation easement and to require restoration of the land to condition at time of the grant of easement.

Injunction and Restoration. To enjoin any use of, or activity on, the Conservation Zone that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require *[or undertake]* the restoration of such areas or features of the Conservation Zone as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section ____.

- ☒ Provide right of organization to enforce terms of the conservation easement.

To enforce the terms of this Easement, consistent with Section ____.

**Permitted Uses
and Activities**

- ☒ Tailor "permitted uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Permitted uses might include modification of existing structures, construction of roads or structures in specified areas, access by grantor for passive recreation, agricultural or timber harvesting activities in specified areas or under specified conditions.
- ☒ Include ability to undertake stewardship activities on the property.

Stewardship Activities. The undertaking of any activity pursuant to any Stewardship Plan covering the Conservation Zone is consistent with the purpose of this Easement.

Appendix H, page 4 of 12.

**Prohibited Uses
and Activities**

- ☒ Tailor "prohibited uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Prohibited uses might include agricultural or timber harvesting activities in specified areas, land subdivision, construction of roads or structures, hunting, or mining.

**Notice and
Approval**

- ☒ Require advance notice to organization if landowner plans to undertake certain permitted actions that could be inconsistent with the purpose of the conservation easement.
- ☒ Provide right of organization to approve, deny or condition proposed actions of landowner.
- ☒ Provide addresses of landowner and organization for required notices under the easement.

**Dispute
Resolution and**

- ☒ Provide right of organization to give notice of violations to landowner, with demand for repair or restoration.

**Grantee's
Remedies**

Notice of Violation, Corrective Action. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Conservation Zone so injured to its prior condition in accordance with a plan approved by Grantee.

Grantor's Failure to Respond. Grantee may bring an action as provided in subsection ____ if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or
2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

Grantee's Action.

1. *Injunctive Relief.* Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:
 - a. To enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction; and

Appendix H, page 5 of 12.

b. To require the restoration of the Property to the condition that existed prior to any such injury.

2. *Damages.* Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of environmental values. Without limiting Grantor's liability in any way, Grantee [, *in its sole discretion, may*][*shall first*] apply any damages recovered to the cost of undertaking corrective or restoration action on the Conservation Zone.

Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conservation Zone, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- ☐ Consider providing that costs of enforcing the terms of the easement are to be borne by landowner unless landowner prevails in court.

Appendix H, page 6 of 12.

In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. *[In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.]* *[If Grantor ultimately prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own costs.]*

- ☐ Consider providing that enforcement of the terms of the easement is at discretion of organization.

Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

- ☐ Consider providing that landowner waive claims and defenses, based upon waiver, laches, estoppel, or prescription.

Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

- ☐ Strongly consider providing that organization cannot bring enforcement action against landowner for injury to the property resulting from circumstances beyond landowner's control.

Appendix H, page 7 of 12.

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Conservation Zone or to recover damages for any injury to or change in the Conservation Zone resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Zone resulting from such causes. *[In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.]*

**Costs, Liabilities
and Insurance,
Taxes,
Environmental
Compliance, &
Indemnification**

- ☐ Consider providing that landowner remains responsible for property and for maintaining adequate comprehensive general liability insurance coverage.
- ☐ Consider providing that landowner still pays property taxes, reduced or otherwise.
- ☒ Require landowner to represent and warrant that no toxic or hazardous substances are found on the property.

Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:.

1. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements, applicable to the Property and its use, including without limitation all federal, state, and local environmental laws, regulations, and requirements;
2. There has been no release, dumping, burying, abandonment or migration from off-site onto the Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;

Appendix H, page 8 of 12.

3. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Conservation Values of the Conservation Zone. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

- ☒ Require landowner to be responsible for environmental cleanup on the property unless caused through the activities of the organization or agency.

Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation.

- ☒ Require landowner to remain responsible for losses, personal injuries, environmental concerns, and other damages unless caused by fault or negligence of the organization.

Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is not a consequence of any activity of any of the Indemnified Parties undertaken under the rights granted to Grantee under this Easement;

Appendix H, page 9 of 12.

2. Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA (42 U.S.C. 9601 *et seq.*) and MTCA (ch. 70.105D RCW), by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Property;
3. The presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties;
4. The obligations, covenants, representations and warranties specified in this section.

**Extinguishment,
Valuation and
Subsequent
Transfer**

- ☒ Provide that conservation easement may be extinguished in whole or in part before expiration of its term only if: (a) the organization determines that the purpose of the conservation easement is no longer practical to accomplish and the parties agree to extinguish the easement or release a portion of the conservation zone from the conservation easement; (b) a court determines that the purpose of the conservation easement is no longer possible to accomplish; or (c) the property is taken by eminent domain. Refer to the Assignment of Rights, Appendix H, page 39.

Extinguishment. This Easement may be terminated or extinguished, whether in whole or in part, before expiration of the term of the Easement only under one or more of the following circumstances:

1. The parties jointly agree to extinguish this Easement, or release a portion of the Conservation Zone from the terms of this Easement, upon a determination by Grantee in its discretion that circumstances have rendered the Purpose of this Easement impractical to achieve. Grantee's determination shall be in accordance with the provisions of the Assignment of Rights referenced in Section ____.
2. Upon petition by one or all of the parties, a court having jurisdiction over this Easement determines by judicial proceedings that circumstances have rendered the Purpose of this Easement impossible to achieve.

Appendix H, page 10 of 12.

3. All or any of the Conservation Zone is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority. *[Grantor and Grantee shall act jointly to recover the full value of the interest in the Conservation Zone subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received.]*

Grantor and Grantee agree that the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Zone subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section ___ of this Easement.

- ☒ Specify how to determine the fair market value of the real property interest held by the organization.

This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section ___ of this Easement, the parties stipulate to have a fair market value determined by *[multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the effective date of this Easement attributable to improvements) by the ratio of the purchase price for the Easement to the fair market value of the Property, without deduction for the purchase price for the Easement, as of the effective date of this Easement]*.

- ☒ Require landowner to reference conservation easement in subsequent deeds and notify organization of sale or transfer and name of prospective transferee (but landowner's failure to do so must not impair the validity of the conservation easement or limit its enforceability in any way).

Subsequent Transfer. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Property;

Appendix H, page 11 of 12.

3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

Easement Amendment

- ☐ Consider allowing for amendment of the conservation easement, provided that the amendment does not affect the qualification of the conservation easement or the status of the organization or agency under applicable laws, is consistent with the original purpose of the conservation easement and does not shorten its duration, and is in accordance with the Assignment of Rights.

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; *provided* that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including without limitation RCW 64.04.130, ch. 84.34 RCW[, or Section 170(h) of the Internal Revenue Code of 1986, as amended] (or any successor provision((s)) then applicable). Any such amendment shall be consistent with the original Purpose of this Easement and shall not shorten its duration, shall be in accordance with the provisions of the Assignment of Rights referenced in Section ____, and shall be recorded in the official records of _____ County, Washington, and any other jurisdiction in which such recording is required.

Assignment and Succession

- ☒ Provide right of organization to assign (transfer) easement to another organization or entity eligible under the IAC, which also *qualifies* under Washington law [and IRS regulations], in accordance with the Assignment of Rights.

Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision((s)) then applicable) *[and a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under]* and in

Appendix H, page 12 of 12.

accordance with the provisions of the Assignment of Rights referenced in Section _____. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

- ☒ Provide for assignment of certain rights in the conservation easement to the State of Washington through the Interagency Committee for Outdoor Recreation.

Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Interagency Committee for Outdoor Recreation, which rights shall be co-held by Grantee and the State of Washington through the Interagency Committee for Outdoor Recreation. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit ____.

Recordation

- ☒ Require that the organization or agency record the conservation easement instrument. (Recordation is the only way to put the world at large on constructive notice of the conservation easement.)

Subordination

- ☒ Require consent by mortgage holders, owners of easements, lease holders, and other lien holders necessary to "bind" those parties to the terms of the conservation easement.

General Provisions

- ☒ Provide that interpretation and performance of the conservation easement is governed by the laws of the State of Washington.
- ☒ Provide for liberal construction in favor of the grant of the conservation easement to effect the purpose of the conservation easement.
- ☒ Provide that conservation easement terms are binding upon parties and their successors and assigns.
- ☒ Require execution and acknowledgment by landowner and organization or agency.

Waiver of Retroactivity Checklist

Complete this page and include with the request.

✓	Elements	Comments (optional)
<input type="checkbox"/>	Waiver of Retroactivity Request Memorandum	
<input type="checkbox"/>	Waiver of Retroactivity Property Information	
<input type="checkbox"/>	Waiver of Retroactivity Questionnaire	
<input type="checkbox"/>	Appraisal <ul style="list-style-type: none"> <input type="checkbox"/> Title page of appraisal <input type="checkbox"/> Appraiser's transmittal letter <input type="checkbox"/> Appraiser's qualifications <input type="checkbox"/> Land value <input type="checkbox"/> Legal description <input type="checkbox"/> Five year history of conveyance to include period in current ownership. 	
<input type="checkbox"/>	Appraisal Review	
<input type="checkbox"/>	Preliminary Title Report	
<input type="checkbox"/>	Location Map	
<input type="checkbox"/>	Parcel Map	
<input type="checkbox"/>	Other applicable items (i.e. option agreement, relocation information, draft conservation easement, etc.):	

- ☐ Waiver of Retroactivity Request Memorandum
- ☐ Waiver of Retroactivity Property Information
- ☐ Waiver of Retroactivity Questionnaire
- ☐ Appraisal
 - ☐ Title page of appraisal
 - ☐ Appraiser's transmittal letter
 - ☐ Appraiser's qualifications
 - ☐ Land value
 - ☐ Legal description
 - ☐ Five year history of conveyance to include period in current ownership.
- ☐ Appraisal Review
- ☐ Preliminary Title Report
- ☐ Location Map
- ☐ Parcel Map
- ☐ Other applicable items (i.e. option agreement, relocation information, draft conservation easement, etc.):

Waiver of Retroactivity Request Memorandum

TO: Interagency Committee for Outdoor Recreation (IAC)
P.O. Box 40917
Olympia, Washington 98504-0917

FROM:

Agency/Organization Name:

Mailing Address:

City/State/Zip Code:

Contact Person's Name:

Title:

Telephone Number:

IAC is hereby asked to consider this request for a Waiver of Retroactivity for the outdoor recreation or habitat conservation property identified below. This request has been prepared in compliance with IAC's Manual #3, Acquiring Land: Policies. We have furnished the required documentation and agree to adhere to all appropriate state and federal statutes governing land transactions. We are aware that the Waiver of Retroactivity, if approved, does not guarantee funding of a project. A waiver, however, will typically allow the acquisition to remain eligible for IAC funding consideration through two program funding cycles.

Property Name(s):

Describe the circumstances that led to this waiver request:

We certify that to the best of our knowledge, the information provided in this request is true and correct.

Authorized

Representative:

(signature)

(date)

Appendix I, page 3 of 4

Waiver of Retroactivity Property Information			
	Property	Property	Property
PROPERTY NAME			
DATE TO BE			
ACRES TO BE			
LAND CHARACTERISTICS			
Uplands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tidelands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PURCHASE TYPE			
Fee ownership	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Less than fee (specify-)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ESTIMATED COSTS			
Property (Appraisal Review	\$	\$	\$
Incidental Costs	\$	\$	\$
Total	\$	\$	\$

Description of Proposed Use

Provide:

- A written description of the proposed use of the property to be acquired and/or donated. The description may include adjacent land uses, important land characteristics, information on whether this expands an existing recreation or habitat area, agency planning support, etc.
- To the best of your understanding, the IAC program in which you plan to apply for funding.

Waiver of Retroactivity Questionnaire

1. Who will be responsible for administration, negotiation, and/or implementation of this acquisition (i.e. in-house staff, paid consultant, attorney , volunteers, other agency staff, etc.)? Explain:
2. What type of landowner currently holds title to the property: Federal, Local, Private, State, Tribal?
3. Does the applicant hold a lease, easement or legal use agreement on the site that permits the proposed use? If yes, when will it expire? Explain.
4. Is there, or will there be, any significant public access or use restrictions? If yes, explain:
5. Do plans exist for interim non-public use of the project site? If yes, explain the interim non-public use and whether or not income will be derived through that use:
6. Will there be encumbrances that limit the proposed uses for the site? If yes, explain:
7. Have you purchased an option on the property? If yes, submit a copy of the option agreement.
8. Government agency applicants only: does this application contain elements required as part of a mitigation plan?
If yes, explain:
9. Will cleanup of hazardous materials be required? (See requirements which begin on page 20.)

Appendix J

Environmental Assessments

- A. An Environmental Assessment (EA) should cover the points listed below in sufficient detail to resolve the test of "major and significant" and provide a basis for deciding whether to prepare an Environmental Impact Statement (EIS) on the project. Such assessments generally need be no more than two or three pages in length, except when complex projects are involved. If the National Park Service (NPS) decides that no EIS is required, the EA supporting that decision and a Finding of No Significant Impact will be made part of the record.

An EA should not be prepared if the need for an EIS is self-evident.

- B. Format and Content. Pertinent information of sufficient scope and depth must be provided in an EA to allow NPS to accurately ascertain the impact of the project and to determine whether an EIS is needed. Whenever possible, an environmental impact should be quantified. In all cases the level of activities involved should be given—number of trees to be removed, cubic yards of debris to be removed, cubic yards of fill to be required, etc. For projects with property rights outstanding, the environmental information must also explain how the State plans to assure that the environment will not be affected significantly. An EA will cover the following four points at a minimum:

- (1) The Proposed Action. include a description of the proposed action, a statement regarding the need for it, a description of what the action is designed to accomplish, location of the project, its scope, the level of impact-causing activities associated with the project, when the action is to take place, and , if applicable, its relation to other Federal, State, or local projects and proposals {i.e., 404 permit, etc. }. Include a map.

- (2) Alternatives to the proposed action. This section will include a brief description of alternatives as required by NEPA Section 102(2)(E), which states:

Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

The environmental impacts of the proposal and the alternatives should be presented in comparative form and should define the issues, pros and cons of a reasonable range of alternatives, and provide a clear basis for choice between them by NPS and the public.

- (3) Environmental impacts of proposed action. Succinctly describe those environmental elements which would be affected. Discuss anticipated impacts on the following elements and any means to mitigate adverse environmental impacts:

- Land use (project site and surrounding area)
- Fish and wildlife

- Vegetation
- Geology and soils
- Mineral resources
- Air and water quality
- Water resources/hydrology'
- Historic / archeological resources
- Transportation/access
- Consumption of energy resources
- Socio-economic effects.

"Impacts" are defined as causing direct or indirect changes in the existing environment, whether beneficial or adverse, which are anticipated as a result of the proposed action or related future actions. To the extent appropriate, the document will discuss impacts of the action, including environmental damage which could be caused by users, upon the physical and biological environment as well as upon cultural, aesthetic, and socio-economic conditions. Elements of impacts which are unknown or only partially understood should be indicated. Any off-site impacts, such as increased traffic on neighborhood roads or increased noise levels in surrounding areas, should be described.

(4) A listing of agencies and persons consulted.

C. Public Notice. Public notice should be provided and, where appropriate, the public should be involved in the environmental assessment process. In many instances, the State's Intergovernmental Review System established under Executive Order 12372 may be one acceptable method for meeting this requirement .

D. Adoption. An EA prepared for a federal grant program not administered by NPS may be submitted if adequate to meet environmental documentation requirements of proposed LWCF actions.

E. Points to Keep in Mind:

- (1) Environmental documentation should be free of project justification and personal bias. The project should be justified elsewhere in the grant application.
- (2) Do not rely on generalities. Specific facts are essential. All statements and conclusions should be supported, and quantified where possible.
- (3) Use graphics to help explain the project.
- (4) Be concise, clear and to the point.
- (5) Adverse impacts should be addressed as fairly as beneficial impacts.

SECTION 3 – INDEX

A

Acknowledgment & Signs · 13
 Acquiring Easements · 9
 Acquiring Publicly Owned Lands · 11
 Acquisition Costs that Exceed Fair Market Value · 13
 Acquisition of Structures to be Retained · 11
 Acquisition & Relocation Policies · 11
 Advance Payments, *see Escrow Payments* · 14
 Appraisal Reporting Criteria · 17
 Appraisal Requirements · 16
 Appraisal Reviews · 17
 Appraiser's Qualifications · 17
 Assignment Of Rights--IAC · 40
 Assignment Of Rights--SRFB · 46
 Authority · 2

B

Background · 1
 Baseline Documentation · 38
 Board · 2, 8, 9
 Buying Contaminated Property · 21

C

Certification · 20
 Civil Rights · 19
 Combination Projects · 9
 Compatible Multiple Use · 15
 Conservation Easement Requirements · 52
 Conservation Easements · 10
 Contact Information · 2
 Contract or Installment Sales · 22
 Conversion · 8

D

Deed Of Right--Conservation · 27
 Deed Of Right--Recreation · 33
 Deed Of Right--Salmon Recovery · 30
 Director · 8, 9, 13, 15, 21, 41, 42, 44, 47, 48, 50
 Documentation Required for Land Donations · 14

E

Eligible Costs · 5, 21
 Eligible Land Acquisition Projects · 3
 Encumbrances · 11
 Environmental Assessments · 68

Escrow Payments · 14
 Estimating Land Value · 15

F

Federal Agencies · 5
 Fees · 18

H

Hazardous Substances · 20
 Hazardous Substances Certification · 37
 Hazardous Substances Support Documentation · 20

I

IAC-SRFB
 Board Decisions · 8
 Ineligible Costs · 7
 Ineligible Land Acquisition Projects · 4
 Inspections · 20
 Installment Sales · 22
 Interim Land Uses · 15
 Introduction · 1

L

Letter Of Opinion · 36
 LWCF · 1, 2, 4, 7, 12

M

Manual Authority · 2
 Manual Conventions · 1
 Mitigation Acquisitions · 10

N

Nonprofit Offer to Purchase · 26

O

Offer Of Purchase At Estimated Just Compensation · 25

P

Perpetual Public Ownership & Stewardship · 3
Phased Projects · 9
Policies · 3
Project Agreement · 8
Public Access · 13
Publications · 2

S

Signs · 8
Statement Of Accompaniment · 24

T

Trail & Access Easements · 10
Types of Eligible Land Acquisition Projects · 3

U

Uniform Acquisition Procedures · 12
Uniform Relocation Assistance · 13
User Fees and other income · 18

W

Waiver of Retroactivity · 7, 9
Waiver of Retroactivity--Checklist · 64
Waiver of Retroactivity--Property Info., Use Description ·
66
Waiver of Retroactivity--Questionnaire · 67
Waiver of Retroactivity--Request Memo · 65
Waivers of Retroactivity—LWCF · 7
Workshops · 2